THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 20.03.2007

+ **WP (C) 1403/2007**

PARIKSHAT KADAN ...Petitioner

- versus -

UNIVERSITY OF DELHI ...Respondent

Advocates who appeared in this case:
For the Petitioner : Mr Brijender Chacher, Sr. Advocate with Mr Rajat Navet
For the Respondent : Mr M. J. S. Rupal

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner appeared for the LLB entrance examination in 2005. This examination was conducted by the Law Faculty of Delhi University. The petitioner passed the examination and was given admission as a regular student of Law Faculty of Law Centre -I of the Delhi University. The petitioner underwent a regular course of study for the first semester. He also sat in the examinations for the first semester and passed in all the five papers, in which he appeared. He obtained an average of 62% marks.

2. Unfortunately, the petitioner did not have the requisite attendance in the second semester. According to the petitioner, this was because of his ill health. According to the University, no valid reasons were shown for non-attendance and his name was struck off from the college rolls by the University. The result being that the petitioner was not permitted to take the examinations for the second semester. The other consequence that followed was that the petitioner was required to take the entrance examination again in the next year. This, the petitioner did in 2006 and, once again, passed the entrance test and was 21st in order of merit in the entrance test. However, he did not pay the admission fee as, according to the petitioner, he was advised that if he took admission in 2006, he would lose out on all the five papers which he had cleared in the previous year. He kept on representing with the University authorities that he may be permitted to continue with his studies in the third semester inasmuch as the only qualification required for promotion from the first year to the second year was that the student should have passed in at least five papers. He submits that he had passed in five papers and, therefore, he was entitled to be promoted to the third semester, which fell in the second year of study. Reliance was placed on the decision of this Court in the case of ***Avijit Bhushan v. University of Delhi : 136 DLT 441*** wherein a learned Single Judge of this Court came to the following conclusion:

> "22. Therefore, after considering the Attendance, Examination and Promotion Rules in detail it is clear that for promotion to III semester the only condition as provided under the rules is passing in five courses in the I year (I and II semester being taken together) which condition has been

fulfilled by the petitioner and that there is nothing in the rules providing for minimum attendance requirement of 66% for promotion to III semester nor the rules contemplates that all the students who are detained in second semester on account of shortage attendance, their admission shall be cancelled.

23. The finding of the respondent about gross irregularity committed by the petitioner is also vitiated as the petitioner has not been given a reasonable opportunity and the order has been passed without proper application of mind. Consequently the order of the respondent striking off the name of the petitioner from the rolls can not be sustained and is hereby set aside. Since the petitioner is eligible to be promoted to the next semester, third semester, he is to be admitted to the third semester. Since the petitioner now can not be admitted to the third semester for the session 2006-2007, he will be entitled for admission to the third semester of session 2007-2008.

24. Since the striking off the name of the petitioner has been held to be illegal and contrary to rules, it will be just appropriate for the respondent to allow the petitioner to attend the classes of second semester and after completing attendance in accordance with rules, allow him to appear in the examination of second semester in the session 2006-2007.

25. In the facts and circumstances of the case and for the aforesaid reason the writ petition is allowed and the order canceling the admission of the petitioner to the LL.B course on account of alleged gross irregularity is quashed and the respondent is directed to promote the petitioner to the III semester and admit him to the third semester during the session 2007-2008. In the meanwhile the respondent is directed to allow the petitioner to attend the classes of second semester and admit him to the said second semester so that the petitioner may now complete his attendance and attend 66% of the classes in the courses of second semester in accordance with the attendance rules so as to be eligible to appear in the examination of second semester. The respondent is therefore, directed to admit the petitioner to the second semester of LL.B course during the session 2006-

> 2007 forthwith. The writ petition is disposed of in terms hereof and the parties are left to bear their own costs."
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> (underlining added)

3. The petitioner herein is seeking a similar relief. Having considered the arguments advanced by the learned counsel for the petitioner as well as by the learned counsel for the University, it appears that this is an unfortunate case and requires special consideration. The petitioner undoubtedly is a good student because he obtained 62% marks in the first semester examinations and was also placed 21st in order of merit in the entrance examination conducted in 2006. This is indicative of the fact that the petitioner is a good student. It is, however, unclear as to why the petitioner did not pursue a regular course of study in the second semester in 2005-2006. There is nothing to substantiate his claim of having fallen ill, although some medical certificates have been submitted. However, the position is that the petitioner ought not to have been denied a promotion to the third semester in view the reasoning given in ***Avijit Bhushan's case***. While disposing of the petition in ***Avijit Bhushan's case***, this Court had set aside the removal of the name of the candidate/ student from the rolls of the college but, all the same, had required the detention of the student to undergo the requisite attendance.

4. In the present case, I find that there is no difficulty with attendance insofar as the first semester is concerned, and by virtue of the order passed by this Court on 23.02.2007, the petitioner was directed to attend classes of the second semester which are being held currently. It is indicated by the learned

counsel for the petitioner that he shall attend all the lectures. Therefore, in order to save the petitioner from any further anguish and further loss of time it would be appropriate to direct that he be permitted to continue with the second semester and to take the examinations, provided he attends all the remaining lectures. It is also directed that the petitioner be included in the rolls of the college as a first year student, undergoing the second semester and his promotion thereafter would depend on the usual rules.

5. This writ petition stands disposed of accordingly. No costs.

BADAR DURREZ AHMED
(JUDGE)

March 20, 2007
SR